

TENTATIVE RULINGS for CIVIL LAW and MOTION October 14, 2009

Pursuant to Yolo County Local Rules, the following tentative rulings will become the order of the court unless, by 4:00 p.m. on the court day before the hearing, a party requests a hearing and notifies other counsel of the hearing. To request a hearing, you must contact the clerk of the department where the hearing is to be held. Copies of the tentative rulings will be posted at the entrance to the courtroom and on the Yolo Courts Website, at www.yolo.courts.ca.gov. If you are scheduled to appear and there is no tentative ruling in your case, you should appear as scheduled.

Telephone number for the clerk in Department Fifteen: (530) 406-6942

TENTATIVE RULING

Case: CACV of Colorado, LLC v. Moreno
Case No. CV G 09-1985

Hearing Date: October 14, 2009 Department Fifteen 9:00 a.m.

The unopposed petition to confirm arbitration award by CACV of Colorado, LLC is **GRANTED**. (Code Civ. Proc., § 1286.) The arbitrator's award of \$3,828.41 in favor of CACV of Colorado, LLC and against Hector Moreno is confirmed.

CACV of Colorado, LLC's request for \$300.00 in attorney's fees and post-judgment interest at 10% per annum is **GRANTED**. (Civ. Code, §§ 1717 and 3287.) Petitioner must file a verified memorandum of costs to recover its costs of suit. (Cal. Rules of Court, rule 3.1700(a)(1).)

Petitioner shall submit a judgment consistent with the Court's order.

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.

TENTATIVE RULING

Case: Capital One Bank, N.A. v. Sullivan
Case No. CV G 09-917

Hearing Date: October 14, 2009 Department Fifteen 9:00 a.m.

Plaintiff Capital One Bank, N.A.'s unopposed motion to amend the complaint is **GRANTED**. (Code Civ. Proc., § 473.) Plaintiff's proposed first amended complaint is deemed to be the amended pleading and it is deemed filed and served as of the date of the granting of the motion.

Defendant shall file his response by November 13, 2009. (Code Civ. Proc., § 471.5, subd. (a).)

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.

TENTATIVE RULING

Case: **JB Management L.P. v. Cody et al.**
Case No. CV CV 09-780

Hearing Date: **October 14, 2009** **Department Fifteen** **9:00 a.m.**

The parties are **DIRECTED TO APPEAR.**

Lee Neal's demurrer to Andrew J. Cody's First Amended Cross-Complaint is **OVERRULED**. (Code Civ. Proc., § 430.10, subds. (e) & (f).) The First Amended Cross-Complaint states facts sufficient to constitute the causes of action for equitable indemnity, express contractual indemnity and declaratory relief.

Lee Neal's Motion to Strike the Cross-Complaint filed by J.B. Management L.P. is **DEEMED** by this Court to be a demurrer based on the rule of "exclusive concurrent jurisdiction." The allegations of the cross-complaint for indemnity concern the lawsuit filed in the Superior Court of the State of California, County of Sacramento, on January 23, 2009, as Case No.: 34-2008-00032653-CU-BC-GD by Tesski Construction, Inc. dba All City Construction against Ron Weber, an individual; US Mail Service Inc., a corporation; JB Management LP. Cross-complainant JB Management L.P. alleges that it is entitled to full and total indemnity by cross-defendants, and each of them, from and against any and all costs, expenses, and liability resulting or arising from the underlying action. Therefore, the resolution of JB's cross-complaint for indemnity filed in this matter is dependant upon the resolution of the underlying case filed in Sacramento Superior Court. Accordingly, the demurrer is **SUSTAINED**. The Court **ORDERS** the cross-complaint **STAYED** pending the resolution of the Sacramento Superior Court matter.

JB Management, L.P.'s request for Judicial Notice is **GRANTED**. (Evid. Code, § 452.)

No request for hearing is required.

TENTATIVE RULING

Case: **Sacramento Floormasters, Inc. v. Hawkins**
Case No. CV CV 09-1191

Hearing Date: **October 14, 2009** **Department Fifteen** **9:00 a.m.**

The demurrer to the first cause of action for defamation is **OVERRULED**. The cross-complaint properly pleads failure to use reasonable care to determine truth or falsity and malice. (Cross-complaint ¶¶ 9, 10, 12 and 14.)

The demurrer to the second cause of action for violation of Labor Code section 1050 is **OVERRULED**. The cross-complaint does not allege when the cross-defendants made alleged defamatory statements to Roussos Construction. (Cross-complaint ¶ 9.)

The demurrer to the third cause of action for breach of the written employment contract is **SUSTAINED WITH LEAVE TO AMEND**. (4 Witkin, Cal. Proc. (5th ed. 2008) Pleading, §

515, p. 648.) The cross-complaint does not allege the cross-complainant's performance or excuse for nonperformance under the alleged contract.

The demurrer to the fourth cause of action for breach of the implied covenant of good faith and fair dealing based on failure to allege the cross-complainant's performance or excuse for nonperformance under the alleged contract is **SUSTAINED WITH LEAVE TO AMEND**. The demurrer to the fourth cause of action on all other grounds is **OVERRULED**. (*Guz v. Bechtel Nat. Inc.* (2000) 24 Cal.4th 317, 353, fn. 18; *Hejmadi v. Amfac, Inc.* (1988) 202 Cal.App.3d 525, 551; Cross-complaint ¶ 25.)

The demurrer to the fifth cause of action is **OVERRULED**. The fifth cause of action is for breach of fiduciary duty, not failure to use reasonable care by a fiduciary. The instant lawsuit was not brought by or on behalf of a principal. (Directions for use for CACI 4101.)

The demurrer to the sixth cause of action for conversion is **OVERRULED**. (Cross-complaint ¶¶ 21-22 and 32-33.)

The demurrer to the eighth cause of action for intentional infliction of emotional distress based on failure to allege severe emotional distress is **SUSTAINED WITH LEAVE TO AMEND**. The demurrer to that portion of the eighth cause of action based on alleged defamation is **SUSTAINED WITHOUT LEAVE TO AMEND**. (Civ. Code, § 3425.3; *Long v. Walt Disney Co.* (2004) 116 Cal.App.4th 868, 873-874.) The demurrer to the eighth cause of action based on all other grounds is **OVERRULED**.

Consistent with the above rulings, the motion to strike is **DENIED**.

The cross-complainant shall file an amended cross-complaint **by no later than October 30, 2009**.

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.

TENTATIVE RULING

Case: Sacramento Regional County Sanitation District v. Nor-Cal Beverage Co., Inc., et al.
Case No. CV ED 04-0403

Hearing Date: October 14, 2009 Department Fifteen 9:00 a.m.

Plaintiff's Motion To Clarify The Ambiguity In The Final Order of Condemnation *Nunc Pro Tunc* is **GRANTED**. (Code Civ. Proc., § 473, subd. (d).)

If no hearing is requested, this tentative ruling is effective immediately. Plaintiff shall serve a copy of the order on Defendants by October 15, 2009.